MOTION FILED APR - 6 1953 SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

October Term, 1952

No. 548

HARRY RENTON BRIDGES, HENRY SCHMIDT and J. R. ROBERTSON,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE AND BRIEF.

WESTERN MECHANICS LOCAL 700, INTERNATIONAL UNION MINE, MILL AND SMELTER WORKERS OF LOS ANGELES, CALIFORNIA,

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MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE.

To the Honorable The Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Comes now Western Mechanics Local 700, International Union Mine, Mill and Smelter Workers of Los Angeles, California, and respectfully moves this Court, pursuant to Rule 27, paragraph 9 of the Rules of this Court, for leave to file the accompanying brief in this case as *amicus curiae*. The consent of the attorney for the petitioners herein to the filing of this brief has been obtained and filed with the Clerk of the Court. The consent of the attorney for the respondent was requested but was refused. The interests of Western Mechanics Local 700, International Union Mine, Mill and Smelter Workers of Los Angeles, California, and its reasons for asking leave to file a brief *amicus curiae*, are set forth below:

Movant is a trade union with 6,000 workers engaged in the warehousing industry and its members have watched with growing concern the almost 20-year persecution and harassment of Harry Renton Bridges. There is a strong feeling among its members that this "relentless crusade" against Bridges has been because he has given his trade union militant and inspired leadership. Movant and its members are concerned lest trade union leadership of that kind be regarded as the basis for criminal conduct.

Movant is also concerned about the singling out of Bridges and his associates for special treatment and application with respect to the laws governing the operation of the statute of limitations and with respect to the administration of criminal justice. It appears to movant and its members that not only has there been a relentless persecution of Bridges, but that in order to achieve the end sought, it has been necessary to apply the law to Bridges and his associates in a manner in which it has never been applied to any other person.

Because movant and its members believe that a cornerstone of American democracy is fair and equal treatment before the law to all persons, they are concerned about what has happened in this case and ask leave to file the attached brief so that this Court may have the benefit of their views.

Respectfully submitted,

WESTERN MECHANICS LOCAL 700, INTERNATIONAL UNION MINE, MILL AND SMELTER WORKERS OF LOS ANGELES, CALIFORNIA,

By JOHN W. PORTER,

Attorney for Moving Party.

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Brief of Western Mechanics Local 700, International Union, Mine, Mill and Smelter Workers of Los Angeles, California, Amicus Curiae.

By leave of Court first had and obtained, Western Mechanics Local 700, International Union Mine, Mill and Smelter Workers of Los Angeles, California, herewith files the following brief as *amicus curiae* in the above-entitled cause and urges the Court that the petition for certiorari now prayed for by petitioners be granted.

I.

For almost twenty years now Harry Renton Bridges has been the object of a relentless crusade unique in the annals of American jurisprudence. That this crusade commenced with Bridges' emergence as an outstanding trade union leader in the great San Francisco strike of 1934, is of considerable concern to all who believe that a

strong vigorous and militant trade union movement is an essential element of American democracy. That the chief instigators and moving figures of this crusade were either anti-labor elements or professional patrioteers, is also of concern to those who believe that such forces represent unhealthy elements in any democratic society.

Although the Court of Appeals for the Ninth Circuit made reference to the long history of proceedings against Bridges, it failed to appreciate their full significance. Contrary to the reasoning of many cases decided by this Court, it held that such a long continued series of persecutions did not deprive Bridges of due process of law. Mr. Justice Frankfurter has said that due process of law requires that there be no "brutal subjection of an individual to successive retrials." (*Louisiana v. Resweber*, 329 U. S. 459.) And the Court below, over twenty years ago, said that due process of law prohibited the government from requiring that one lawfully admitted be "called upon again and again to prove his right to remain."

Choy Yuen Chan v. United States, 30 F. 2d 516.

It would seem that by disregarding what has been done to Bridges for the last twenty years, the Court below ignored the fact that such a course of conduct "offend(ed) those canons of decency and fairness which express the notions of justice of English speaking people." (*Adamson v. California*, 332 U. S. 46.) The due process clause, protecting as it does, the "ultimate decency in a civilized society" (*ibid.*, at 61) should not permit what has been done here to go unchallenged. At the very least, it requires this Court to review the proceedings below to see whether or not they measure up to the standards which this Court has applied in so many other cases.

II.

Moyant is also concerned with what appears to have been a discriminatory application of judicial principles to Bridges and his associates. This Court, and every other Circuit Court of Appeals which has had occasion to consider the question, has held that a perjurious or false statement, whether in connection with so-called "tax frauds" or "naturalization frauds" or "citizenship frauds" or "employment frauds" is not within the scope and effect of the Wartime Suspension Act. And in every single case but this one, an indictment or the counts thereof, based upon such a false statement made more than three years before the return day, has been dismissed.

United States v. Noveck, 271 U. S. 201;
United States v. McElvain, 272 U. S. 633;
United States v. Scharton, 285 U. S. 518;
United States v. Marzani, 168 F. 2d 133;
United States v. Obermeier, 186 F. 2d 243.

See also:
United States v. Anzalone, 197 F. 2d 714.

The Court below ignored these cases and applied a special rule to Bridges and his associates. Not only because this decision squarely conflicts with the decisions of this Court and those of other courts of appeals should this Court grant the petition for certiorari, but also because such judicial discrimination against the petitioners is, as to them, a denial of due process of law. Compare this situation with *Yick Wo v. Hopkins*, 118 U. S. 356, where it was held that discrimination in the application of an otherwise valid statute constituted a denial of equal protection of the laws.

Furthermore, the Court below approved the trial court's application to this case, and this case alone, of an instruction that a reasonable doubt means a doubt for which "a good reason would be assigned." So far as we know, no court has ever approved such an instruction before. As a matter of fact, the Court of Appeals stated that such an instruction was not to be "commended." It did not consider how that instruction, together with other conduct of the trial court, such as an improper limitation of the right of cross-examination to the defendants, hostile and prejudicial comments by the trial judge during the course of the trial, and other similar matters, resulted in the kind of error which must require reversal.

Kotteakos v. United States, 326 U. S. 711.

For this radical departure from normal rules governing the administration of criminal law, and in order that the trial courts may be properly advised concerning their duties and obligations in criminal cases, this Court should grant the petition and rule upon the questions presented.

It appears significant to us that only in the case involving Bridges and his associates was such a wide departure from the normal rules condoned by an appellate court.

For the foregoing reasons, *amicus curiae* joins in the prayer of petitioners that the writ of certiorari be granted and the entire cause be reviewed by this Court.

Respectfully submitted,

WESTERN MECHANICS LOCAL 700, INTERNATIONAL UNION MINE, MILL AND SMELTER WORKERS OF LOS ANGELES, CALIFORNIA,

By JOHN W. PORTER,

Attorney for Amicus Curiae.

Service of the within and receipt of a copy thereof is hereby admitted this.....day of April, A. D. 1953.